

January 29, 1996

Mr. Paul A. Buse
Vice President
Bankers Insurance Center
1120 20th Street, NW
Washington, D.C. 20036-3406

RE: Banks selling automobile extended service contracts

Dear Mr. Buse:

This correspondence is in response to your letter dated January 19, 1996, concerning the questions of whether state chartered banks in Indiana may engage in the sale of a sponsored automobile extended service contract. The law for state chartered banks does not specifically address this question, but we believe that what you propose is a type of transaction which comes within the purview of IC 28-1-11-3.1(a). The cited statute gives state banks the authority to exercise powers incidental and proper or which may be necessary and usual in carrying on a general banking business.

A recent United States Supreme Court decision set forth some definitive guidelines for banking regulators in their application of the "incidental and proper" clauses that exist in most state banking codes and in the national banking act. See **Nationsbank v. Variable Annuity Life Insurance Co. Et Al.** The Court said that a regulator has discretion, within reasonable bounds, to permit banking activities beyond those the statute sets forth as exemplary. It further said that: "It is settled that courts should give great weight to any reasonable construction of a regulatory statute adopted by the agency charged with the enforcement of that statute." In another case, **Chevron U.S.A. v. Natural Resources Defense Council, Inc.**, 467 U.S. 837 the U.S. Supreme Court said: "if the statute is silent or ambiguous with respect to the specific issue, the question for the court is whether the agency's answer is based on a permissible construction of the statute."

Based upon the facts presented in your correspondence to us and the OCC we feel that a bank would be protecting itself against a loss in the value of the property securing its loans by the selling of the type of product you propose. This seems to be securing a lending activity which is provided for by statute and should be considered incidental to that activity. We are aware of **Griffin Systems v. Dept of Insurance** 60 Ohio St. d.554 (1991) which said that vehicle service contracts which compensate the buyer for repairs arising from a mechanical breakdown are not insurance. We agree with the Office of the Comptroller when, in interpretive letter 671, it concluded: "This ruling does not alter the fact that **the functions of the vehicle service contracts are closely related to the underlying credit transactions regardless of how they might be labeled** for purposes of any particular state's insurance law." (Our emphasis)

In conclusion, we feel that where a contract protects the value of collateral securing financing extended by a state bank and aids in the collection of a particular type of financing extended by the bank, the bank's sale of such a contract may properly be viewed as part of or incidental to the business of banking within the meaning of IC 28-1-11-3.1(a).

I hope that this letter has sufficiently assisted you in understanding our position on this particular issue.

Sincerely,

Charles W. Phillips
Director

JPG

cc: James M. Cooper
Deputy Director of Depository
Division

Randy L. Rowe
Supervisor of the Bank Division

J. Philip Goddard
Counsel